

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Petition of FullTel, Inc. for Approval of an )	
Interconnection Agreement Pursuant to )	<b>Case No. TK-2005-0079</b>
Section 252 of the Communications Act )	
of 1934, as Amended )	

**MOTION TO REJECT CONFIRMATION AND/OR  
NOTICE OF ADOPTION OF INTERCONNECTION AGREEMENT  
BY SUMMARY DETERMINATION ON THE PLEADINGS  
AND  
ALTERNATIVE REQUEST FOR HEARING**

COMES NOW CenturyTel of Missouri, LLC (“CenturyTel”), pursuant to the Missouri Public Service Commission’s (“Commission”) *Order Directing Notice And Making CenturyTel of Missouri, LLC A Party* (“Order”) entered in this matter on October 5, 2004, and Commission Rules 4 CSR 240-2.080 and 4 CSR 240-2.117(2), and for its Motion to Reject Confirmation and/or Notice of Adoption of Interconnection Agreement By Summary Determination on the Pleadings and Alternative Request for Hearing respectfully states as follows:

1. On September 30, 2004, FullTel, Inc. (“FullTel”) filed a pleading with this Commission titled “Petition Of FullTel, Inc., For Confirmation Of Interconnection Agreement Adoption (‘Petition’),” wherein FullTel submits for Commission approval its purported “adoption of the Interconnection Agreement between CenturyTel of Missouri, LLC (‘CenturyTel-MO’) and Brooks Fiber Communications of Missouri, Inc., (‘the Agreement’), that was filed by GTE Midwest Incorporated, d/b/a Verizon Midwest (CenturyTel’s predecessor-in-interest) with the Commission on July 18, 2002 in docket

CK-2002-1146.”<sup>1</sup> FullTel further announces that it “also adopts the Brooks Fiber Agreement as the Agreement that will govern the relationship between FullTel and Spectra Communications Group, LLC d/b/a CenturyTel (“Spectra”) in the State.”<sup>2</sup> As a result of FullTel’s mischaracterization of the underlying agreement to be adopted as being between “CenturyTel of Missouri, LLC and Brooks Fiber Communications of Missouri, Inc.,” the Commission issued its standard order directing notice, referencing FullTel’s “petition for confirmation” as a Notice of Adoption and making CenturyTel of Missouri, LLC a party to this proceeding.<sup>3</sup> However, a careful review of the Petition -- and the Commission’s Orders and statutory sections cited therein -- reveals that FullTel is attempting to unlawfully adopt the terms of an underlying Interconnection Agreement between Brooks Fiber Communications of Missouri, Inc. and GTE Midwest Incorporated d/b/a Verizon Midwest (the “Brooks Agreement”) and apply those terms to CenturyTel of Missouri, LLC. The relief requested in FullTel’s pleading is far beyond that authorized by 47 USC 252(i) and 47 CFR 51.809 and, based on the pleadings herein and Commission Rule 4 CSR 240-2.117(2), CenturyTel moves for a determination on the pleadings and dismissal of this case. As will be shown herein, such summary disposition is not otherwise contrary to law or contrary to the public interest. In the alternative, and in response to the Commission’s *Order*, CenturyTel requests a hearing in this matter.

2. While FullTel repeatedly refers to “the agreement between CenturyTel and Brooks Fiber” throughout its pleading, mere repetition will not alter the facts. In Paragraph 3 of its petition, FullTel suggests that it “has exercised its right to adopt the

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<sup>1</sup> Petition, page 1.

<sup>2</sup> *Id.*

<sup>3</sup> Despite FullTel’s mischaracterizations and convoluted rationale in attempting to draw Spectra Communications Group, LLC d/b/a CenturyTel (“Spectra”) into its purported “adoption” (which will be discussed, *infra*), the Commission did not make Spectra a party to this proceeding.

agreement between CenturyTel and Brooks Fiber, filed with the Missouri Public Service Commission on July 18, 2002 in docket CK-2002-1146.” A simple review of the *Order Approving Interconnection Agreement* entered in that case on August 5, 2002 (attached hereto as **Exhibit A** and incorporated herein by reference), quickly reveals that the order approves the Interconnection Agreement executed and filed jointly by Brooks Fiber Communications of Missouri, Inc., and GTE Midwest Incorporated, d/b/a Verizon Midwest.

3. Accordingly, when FullTel notified CenturyTel of Missouri, LLC of its attempt to adopt the above-referenced Agreement, CenturyTel advised FullTel that “CenturyTel of Missouri, LLC was not a party to the Brooks Fiber Agreement and, accordingly, the Brooks Fiber Agreement is not available for adoption pursuant to Section 252(i) of the Act.” (*See*, correspondence dated June 24, 2004 from Larry W. Dority to Andrew M. Klein, attached hereto as **Exhibit B** and incorporated herein by reference).

4. Federal Statute 47 U.S.C. 252(i) requires:

A local exchange carrier shall make available any interconnection service, or network element provided under an agreement approved under this section **to which it is a party** to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement. (Emphasis added).

5. FullTel erroneously suggests that it should be able to adopt the Brooks Fiber Agreement on the basis of language contained in the Nonunanimous Stipulation and Agreement, set forth as Attachment 1 to the Commission’s Report and Order entered in Case No. TM-2002-232, effective May 31, 2002. By that Report and Order, the Commission, *inter alia*, granted CenturyTel of Missouri, LLC a certificate of service

authority to provide basic local exchange telecommunications service and authorized GTE Midwest, Inc., doing business as Verizon Midwest, to transfer and sell its remaining 96 exchanges to CenturyTel of Missouri, LLC. The Report and Order provided that the certificate of service authority shall become effective when the company's tariff becomes effective. CenturyTel of Missouri, LLC's proposed tariff was subsequently approved for service rendered on and after September 1, 2002.

6. In Paragraph 7 of its petition, FullTel, in referring to language contained in the above-referenced Nonunanimous Stipulation and Agreement and set forth in the Report and Order, argues, "Among those conditions was the requirement that CenturyTel allow carriers such as FullTel to adopt Verizon interconnection agreements in Missouri." FullTel's argument is a mischaracterization of the parties' agreement and the Commission's Report and Order in that case.

CenturyTel shall use the same rates, terms and conditions of service as Verizon on the date of the closing of the transaction. CenturyTel shall, in good faith, negotiate interconnection agreements with all carriers who currently have interconnection agreements with Verizon and who desire to interconnect with CenturyTel. Where technically feasible, the new agreement will have the same terms and conditions as did the agreement with Verizon. These agreements will differ from the Verizon agreements only with respect to technical differences to reflect the way CenturyTel interfaces with the interconnecting carrier. In cases in which services are being provided under these interconnection agreements, CenturyTel will cooperate with the interconnecting carriers to secure expeditious approval of a replacement interconnection agreement and to ensure continuity of service for their customers. CenturyTel shall provide local interconnection services as set out in the interconnection agreement between Verizon and Intervenor AT&T, and adopted by Intervenor Fidelity, for a period of one year following the closing of the proposed transaction. Any interconnection agreement not replaced within one year shall continue in force on a month-to-month basis until replaced. (Report and Order, page 6, emphasis added).

7. FullTel did not have an agreement with Verizon when CenturyTel acquired its exchanges from Verizon; as set forth in its own petition, FullTel's application for a CLEC certificate in Missouri is still pending in Case No. LA-2005-0055. To any extent CenturyTel was to "honor" existing interconnection agreements with those carriers who currently had interconnection agreements with Verizon, there was no requirement or suggestion whatsoever that CenturyTel would "offer the same terms and conditions to others," as erroneously stated by FullTel.<sup>4</sup> CenturyTel of Missouri, LLC was not a party to the Interconnection Agreement between Brooks Fiber Communications of Missouri, Inc. and GTE Midwest Incorporated, d/b/a Verizon Midwest, approved by this Commission on August 5, 2002, and CenturyTel of Missouri, LLC has no obligation under 47 U.S.C. 252(i) to provide interconnection to FullTel under that agreement.

8. As previously noted, FullTel also mischaracterizes language contained in a Joint Recommendation filed back in January 2000 in Case No. TM-2000-182, involving Spectra Communications Group, LLC's acquisition of 107 exchanges from GTE Midwest Incorporated, and erroneously suggests that, "As was the case with the subsequent acquisition of territory, Spectra agreed to provide service in accordance with the terms of the GTE/CLEC interconnection agreements."<sup>5</sup> Attempting to buttress its effort to bring Spectra within its purported "adoption," FullTel references similar arguments presented in pending Case No. CO-2005-0066 involving Socket Telecom LLC. Such arguments were clearly refuted in both CenturyTel's responsive pleading in that docket, and the Staff Memorandum which "recommends that the Commission reject

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<sup>4</sup> Petition, Par. 8, page 4.

<sup>5</sup> *Id.*, Par. 9, page 5.

Socket's proposed notice of adoption of an interconnection agreement."<sup>6</sup> As succinctly pointed out by Staff in that proceeding: "Socket Telecom argues, 'In connection with that authorization [referencing Case No. TM-2000-182], Spectra agreed to abide by the terms of GTE's existing interconnection agreements.' **Socket's argument is a mischaracterization of Spectra's agreement in that case.**" (Staff Memorandum, Case No. CO-2005-0066, ¶ 13, page 3, emphasis added). Staff proceeds to cite the language contained in that Joint Recommendation,<sup>7</sup> and concludes that "Because Spectra is not a party to the Interconnection Agreement between AT&T and GTE [which Socket attempts to adopt], Spectra has no obligation under 47 U.S.C. 252(i) to provide interconnection to Socket Telecom under that agreement." Accordingly, "Staff recommends that the Commission reject Socket Telecom's proposed adoption and application of the GTE and AT&T Interconnection Agreement to Spectra Communications Group, LLC." (*Id.*, page 4).

9. Of course, FullTel's "notification" upon which it bases its purported adoption in this proceeding (attached to its petition as Exhibit A), contains no reference whatsoever to Spectra Communications Group, LLC. Evidently, it was only upon learning of Socket's misguided efforts that FullTel decided to suggest a similar approach.

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<sup>6</sup> Staff Memorandum, Case No. CO-2005-0066, October 15, 2004.

<sup>7</sup> "I. Interconnection Agreements.

Spectra agrees to make every effort to negotiate new interconnection agreements with all competitive local exchange companies ("CLECs") who currently have interconnection agreements with GTE and who desire to have interconnection with Spectra. Where it is feasible, Spectra will enter into agreements which have the same rates, terms and conditions as those agreements previously negotiated with GTE. There will, necessarily, be some differences in these agreements because of the different methods of interfacing between GTE and Spectra. If Spectra and any CLEC are unable to agree on the terms of these agreements, Spectra agrees to submit any disputes to the Commission for resolution. In those situations where the CLEC is already providing service in an exchange to be transferred, Spectra agrees to cooperate with the CLEC in requesting expedited approval of these new interconnection agreements from the Missouri Public Service Commission." Page 5, Attachment 1, Report and Order, Case No. TM-2000-182.

10. At Footnote 6 of its Petition, FullTel states: “FullTel notes that it already submitted to CenturyTel, on September 9, 2004, a request to initiate negotiations for a long-term interconnection agreement. As a result, adoption of the Agreement is being sought for use on an interim basis, in accordance with applicable law.” To the contrary, for the same reasons that FullTel cannot “opt into” the underlying agreement to which CenturyTel of Missouri, LLC is not a party, such agreement cannot be the basis for an “interim” arrangement. There are existing interconnection agreements with CLECs to which CenturyTel is a party. However, the above information, coupled with the fact that FullTel has simply chosen not to adopt an existing CenturyTel of Missouri, LLC interconnection agreement to date, underscores the point that summary dismissal of this matter on the pleadings is clearly not otherwise contrary to law or contrary to the public interest. As pointed out in the Staff Memorandum filed in Case No. CO-2005-0066, “Finally, Socket Telecom has not submitted to the Commission an arbitrated, negotiated or adopted interconnection agreement with Spectra.”<sup>8</sup> Similarly, FullTel has not submitted to the Commission an arbitrated, negotiated or adopted interconnection agreement with CenturyTel of Missouri, LLC in this proceeding.

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<sup>8</sup> *Id.*, page 4.

WHEREFORE, CenturyTel of Missouri, LLC moves that the Commission reject FullTel's confirmation and/or notice of adoption of interconnection agreement by summary determination on the pleadings herein; in the alternative, CenturyTel requests a hearing in this matter.

Respectfully submitted,

/s/ Larry W. Dority

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Attorneys for CenturyTel of Missouri, LLC



### CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 25th day of October, 2004, to:

Mark W. Comley  
Newman, Comley & Ruth, P.C.  
601 Monroe Street  
P.O. Box 537  
Jefferson City, MO 65102

Dana K. Joyce, General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

Andrew M. Klein  
Kelley, Crye & Warren, LLP  
1200 19<sup>th</sup> Street, N.W.  
Washington, D.C. 20036

Office of the Public Counsel  
P. O. Box 2230  
Jefferson City, Missouri 65102

/s/ Larry W. Dority \_\_\_\_\_  
Larry W. Dority

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Adoption by Brooks Fiber	)	
Communications of Missouri, Inc., of the Verizon/ICG	)	<b><u>Case No. CK-2002-1146</u></b>
Telecom Group, Inc., Interconnection Agreement.	)	

## **ORDER APPROVING INTERCONNECTION AGREEMENT**

This order approves the Interconnection Agreement executed and filed jointly by Brooks Fiber Communications of Missouri, Inc., and GTE Midwest Incorporated, d/b/a Verizon Midwest.

On June 18, 2002, Brooks filed a notice of adoption of the interconnection agreement between Verizon California Inc. f/k/a GTE California Incorporated and ICG Telecom Group, Inc., pursuant to the BA/GTE Merger Conditions released by the Federal Communications Commission on June 16, 2000, in CC Docket No. 98-184.

Brooks is a competitive local exchange telecommunications company under a certificate granted and tariffs approved by the Commission. Verizon Midwest is an incumbent local exchange company certificated to provide service in Missouri.

On July 1, 2002, the Commission issued an order making Verizon Midwest a party to this case and directing any party wishing to request a hearing to do so no later than July 22, 2002. No requests for hearing were filed.

On July 18, 2002, Brooks and Verizon Midwest jointly filed a Substitute Interconnection Agreement and withdrew the adoption notice and the original interconnection agreement, Exhibits 2 and 3 to Brooks's Notice of Adoption filed on June 18, 2002. The new Agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996.<sup>[1]</sup> The Agreement would permit Brooks to interconnect with Verizon Midwest and to provide resold and facilities-based telecommunications services.

The Staff of the Commission filed a memorandum and recommendation on July 30, 2002, recommending that the Substitute Agreement filed on July 18, 2002, be approved.

### **Discussion**

The Commission, under the provisions of Section 252(e) of the Act, has authority to approve an interconnection or resale agreement negotiated between telecommunications companies. The Commission may reject an interconnection or resale agreement only if the agreement is discriminatory or is inconsistent with the public interest, convenience and necessity.

The Staff memorandum recommends that the Substitute Agreement be approved and notes that the Agreement meets the limited requirements of the Act in that it is not discriminatory toward nonparties and is not against the public interest. Staff recommends that the Commission direct the parties to submit any further modifications or amendments to the Commission for approval.

### **Findings of Fact**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

The Commission has considered the application, the supporting documentation, and Staff's recommendation. Based upon that review, the Commission finds that the Substitute Agreement meets the requirements of the Act in that it does not discriminate against a nonparty carrier and implementation of the Agreement is not inconsistent with the public interest, convenience and necessity. The Commission finds that approval of the Agreement should be conditioned upon the parties submitting any modifications or amendments to the Commission for approval pursuant to the procedure set out below.

### **Modification Procedure**

The Commission has a duty to review all interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act.<sup>[2]</sup> In order for the Commission's role of review and approval to be effective, the Commission must also review and approve or recognize modifications to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection.<sup>[3]</sup> This duty is in keeping with the Commission's practice under its own rules of requiring telecommunications companies to keep their rate schedules on file with the Commission.<sup>[4]</sup>

The parties to each resale or interconnection agreement must maintain a complete and current copy of the agreement, together with all modifications, in the Commission's offices. Any proposed modification must be submitted for Commission approval or recognition, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution procedures.

Modifications to an agreement must be submitted to the Staff for review. When approved or recognized, the modified pages will be substituted in the agreement, which should contain the number of the page being replaced in the lower right-hand corner. Staff will date-stamp the pages when they are inserted into the agreement. The official record of the original agreement and all the modifications made will be maintained in the Commission's Data Center.

The Commission does not intend to conduct a full proceeding each time the parties agree to a modification.

Where a proposed modification is identical to a provision that has been approved by the Commission in another agreement, the Commission will take notice of the modification once Staff has verified that the provision is an approved provision and has prepared a recommendation. Where a proposed modification is not contained in another approved agreement, Staff will review the modification and its effects and prepare a recommendation advising the Commission whether the modification should be approved. The Commission may approve the modification based on the Staff recommendation. If the Commission chooses not to approve the modification, the Commission will establish a case, give notice to interested parties and permit responses. The Commission may conduct a hearing if it is deemed necessary.

### **Conclusions of Law**

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission, under the provisions of Section 252(e)(1) of the federal Telecommunications Act of 1996 [5] is required to review negotiated interconnection agreements. It may only reject a negotiated agreement upon a finding that its implementation would be discriminatory to a nonparty or inconsistent with the public interest, convenience and necessity. [6] Based upon its review of the Substitute Agreement between Brooks and Verizon Midwest and its findings of fact, the Commission concludes that the Agreement is neither discriminatory nor inconsistent with the public interest and should be approved.

The Commission notes that prior to providing telecommunications services in Missouri, a party shall possess the following: (1) an interconnection agreement approved by the Commission; (2) except for wireless providers, a certificate of service authority from the Commission to provide interexchange or basic local telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission.

### **IT IS THEREFORE ORDERED:**

1. That the Agreement between Brooks Fiber Communications of Missouri, Inc., and GTE Midwest Incorporated, d/b/a Verizon Midwest, filed on July 18, 2002, is approved.
2. That any changes or modifications to this Agreement shall be filed with the Commission pursuant to the procedure outlined in this order.
3. That this order shall become effective on August 15, 2002.
4. That this case may be closed on August 16, 2002.

**BY THE COMMISSION**

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Nancy Dippell, Senior Regulatory Law  
Judge, by delegation of authority pursuant  
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 5th day of August, 2002.

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[1] See 47 U.S.C. § 251, *et seq.*

[2] 47 U.S.C. § 252.

[3] 47 U.S.C. § 252(h).

[4] 4 CSR 240-30.010.

[5] 47 U.S.C. § 252(e)(1).

[6] 47 U.S.C. § 252(e)(2)(A).

**FISCHER & DORITY**  
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June 24, 2004

VIA FACSIMILE  
(202) 955-9792

Andrew M. Klein, Esq.  
Kelley Drye & Warren LLP  
1200 19<sup>th</sup> Street, N.W.  
Suite 600  
Washington, D.C. 20036

Re: FullTel, Inc.

Dear Mr. Klein:

This letter is in response to your correspondence on behalf of FullTel, Inc. dated June 18, 2004, to CenturyTel, Inc. concerning FullTel's attempt to adopt an interconnection agreement between GTE Midwest Incorporated, d/b/a Verizon Midwest ("Verizon Midwest") and Brooks Fiber Communications of Missouri, Inc. (the "Brooks Fiber Agreement"). CenturyTel of Missouri, LLC was not a party to the Brooks Fiber Agreement and, accordingly, the Brooks Fiber Agreement is not available for adoption pursuant to Section 252(i) of the Act. CenturyTel consistently has taken this position regarding interconnection agreements that existed between Verizon Midwest and CLECs at the time of CenturyTel of Missouri, LLC's acquisition of Verizon's Missouri properties, in accordance with the terms and obligations resulting from the Nonunanimous Stipulation and Agreement and Report and Order entered in Missouri Public Service Commission Case No. TM-2002-232.

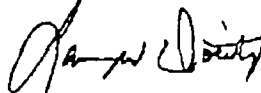
If you or representatives of FullTel, Inc. wish to discuss the adoption of a current CenturyTel of Missouri, LLC interconnection agreement in Missouri, please contact Susan Smith, Director-External Affairs, CenturyTel, 911 North Bishop, Suite C-207, Texarkana, TX 75501, (903) 792-3499.

Exhibit B

Andrew M. Klein, Esq.  
June 24, 2004  
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Please feel free to contact me should you have any questions or wish to discuss this matter further. Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Larry W. Dority", written in a cursive style.

Larry W. Dority

cc: William Voight, Missouri Public Service Commission (via facsimile)  
Mark Comley, Esq., Newman, Comley & Ruth (via facsimile)  
Arthur Martinez, CenturyTel (via facsimile)  
Susan Smith, CenturyTel (via facsimile)